

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6736**

**BILL NUMBER:** SB 223

**NOTE PREPARED:** Apr 13, 2009

**BILL AMENDED:** Apr 13, 2009

**SUBJECT:** Prosecution Costs, Inmate Litigation, and Trafficking with Inmates.

**FIRST AUTHOR:** Sen. Arnold

**FIRST SPONSOR:** Rep. Tincher

**BILL STATUS:** 2<sup>nd</sup> Reading - 2<sup>nd</sup> House

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) The bill does the following.

*Sentencing Policy Study Committee* – The Committee would evaluate whether the state should pay all costs of trial in a prosecution for an offense committed at a state correctional facility.

*Offender Civil Actions* – It provides that an offender who has filed at least three civil actions that have been dismissed as frivolous may not file a new complaint or petition as an indigent person unless the offender is in immediate danger of serious bodily injury.

*Trafficking with an Inmate* – The bill makes trafficking with an inmate (which is, without enhancement, a Class A misdemeanor) a Class C felony if the item trafficked is a cellular telephone. It makes it a Class A misdemeanor if a person possesses or carries into a penal facility or a juvenile facility a controlled substance or a deadly weapon.

*Mutilation of a Corpse* – The bill makes mutilation of a corpse a Class B felony if the mutilation interferes with the investigation of the death. Under current law, it is a Class D felony.

*Prohibition of Contracting Management or Operation of a Correctional Facility* – Department of Correction (DOC) would not be permitted to enter into or renew a contract for the operation or management of a correctional facility.

*Prohibition from Receiving Offenders from other States for Correctional Supervision* – DOC would not be permitted to contract with other states to receive offenders for correctional supervision.

**Effective Date:** (Amended) Upon passage; July 1, 2009.

**Explanation of State Expenditures:** (Revised) *Sentencing Policy Study Committee* – The Sentencing Policy Study Committee has 20 members. Legislative Council resolutions in the past have established budgets for interim study committees in the amount of \$16,500 per interim for committees with 16 members or more.

*Offender Civil Actions* – This provision is expected to have a minimal effect on court expenditures. The bill would allow more offenders to file claims against the Department of Correction (DOC), but the added number would not likely be significant.

Unless plaintiffs are permitted to file "*in forma pauperis*", they must pay a filing fee at either the trial or appeal level and submit any court documents in a specific font style and size that could only be produced on a computer printer.

Under state court rules, parties who are permitted to proceed *in forma pauperis* are not required to prepay filing fees in actions at either the trial court or appellate level. They may also file legibly handwritten or typewritten briefs and other papers. (*Indiana Rules of Appellate Procedure*)

*Trafficking with an Inmate* – State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail. A Class C felony is punishable by a prison term ranging between 2 and 8 years. The period of incarceration will depend upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$20,287 in FY 2008. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost per offender for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily. The estimated average cost of housing a juvenile in a state juvenile facility was \$69,223. The average length of stay in DOC facilities for all Class C felony offenders is approximately two years.

(Revised) *Mutilation of a Corpse* – State expenditures would increase if an offender is incarcerated in a state prison for a longer period of time. A Class D felony is punishable by a prison term ranging between six months to three years. A Class B felony is punishable by a prison term ranging from 6 to 20 years. The average expenditure to house an adult offender was \$20,287 in FY 2008. (This does not include the cost of new construction.)

(Revised) *Background– Offender Civil Actions* – Offenders who are affected by this bill include persons committed to the DOC or incarcerated in a jail. (IC 34-6-2-89)

The Office of the Attorney General maintains a file on its website that records the number of offenders who have filed frivolous lawsuits. As of November 6, 2008, 59 offenders were reported to have filed one or more lawsuits that a court has determined to be frivolous.

<b>Offenders Identified by DOC As Frivolous Litigators</b>	
<b>Number of Frivolous Lawsuits</b>	<b>Number of Offenders</b>
One	45
Two	7
Three	3
Four	2
Ten	1
21	<u>1</u>
Total Offenders	59
Source: Office of the Attorney General	

The Office of the Attorney General reports that in CY 2007, the state of Indiana paid out \$6,918.80 to 51 offenders. Payments ranged from a low of \$3.90 to a high of \$1,500. The average payment was \$135.

*Trafficking with an Inmate and State Costs for Prosecution* – Currently, it is a Class C felony to deliver or carry in a controlled substance or a deadly weapon to an adult or juvenile correctional facility. In 2007, there were five offenders committed to a state correctional facility for felony trafficking with an inmate.

*Prohibition of Contracting Management or Operation of a Correctional Facility* – DOC has contracted with GEO Group to manage the New Castle facility since January 2006, for an initial term of four years. After 2010, DOC would be required to employ state employees to manage and operate New Castle.

*Prohibition from Receiving Offenders from Other States for Correctional Supervision* – DOC currently does not receive offenders from other states.

**Explanation of State Revenues:** *Trafficking with an Inmate - Felony Offense:* More revenue to the Common School Fund could be collected if a larger criminal fine is assessed by the sentencing court.

*Trafficking with an Inmate - Misdemeanor Offense* – There are no data available to indicate if more offenders will be convicted of trafficking with an inmate if additional elements are added to the crime. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund.

*Penalty - Felony and Misdemeanor Offenses* – The maximum fine for a Class A misdemeanor is \$5,000, while the maximum fine for a Class C felony is \$10,000.

(Revised) *Mutilation of a Corpse* – If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. No change would likely occur in state revenue as a result of this bill since criminal fines and court fees are the same for either Class D or B felonies.

**Explanation of Local Expenditures:** *Penalty - Felony and Misdemeanor Offenses* – If an offender is

sentenced to state prison rather than to a county jail, the costs to the county may be reduced. The maximum term of imprisonment for a Class A misdemeanor is up to one year. The average daily cost to incarcerate a prisoner in a county jail is roughly \$44.

**Explanation of Local Revenues:** *Penalty - Felony and Misdemeanor Offenses* – If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

(Revised) *Mutilation of a Corpse* – No additional revenues would be expected since the court fees for Class D and Class B felonies are both \$120.

**State Agencies Affected:** DOC.

**Local Agencies Affected:** Trial courts; local law enforcement agencies.

**Information Sources:** Indiana Sheriffs' Association; Office of the Attorney General <<http://atgindsha01.atg.in.gov/legal/litigation/litscreen/>> Appellate Rule 40 Motion to Proceed In Forma Pauperis. <<http://www.in.gov/judiciary/rules/appellate/#r40>> Office of the Attorney General – Annual Tort Report Detail, CY 2007. Website for GEO group – <http://phx.corporate-ir.net/phoenix.zhtml?c=91331&p=irol-newsArticle&ID=799950&highlight=> Indiana Sheriffs' Association, DOC.

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